



Before the Electricity Ombudsman
9/2, 6th Floor, Mahalakshmi Chambers, M.G.Road,
Bangalore

Present: B.R.Jayaramaraje Urs, IAS (Retd.)

Electricity Ombudsman

Case No.OMB/B/G-141/2013/218

Dated 24.06.2013

M/s.Tavanth Technologies Pvt.Ltd.,
 Guava Garden,
 CSRI-II, 5th Block,
 Koramangala,

BANGALORE-560095

**(Represented by Sri Shridhar Prabhu,
 Advocate - Authorised Representative)**

.. **Appellant**

Vs

1. The Asst. Executive Engineer(EI)
 S-4 Sub-Division, BESCO,
 Koramangala,
 BANGALORE-560048
**(Represented by Shri Vinayaka.K, Law Officer,
 BESCO-Authorised Representative)**

2. The Chairperson,
 Consumer Grievance Redressal Forum,
 B.E.S.C.O.M. Corporate Office,
 K.R.Circle,
BANGALORE-560001

.. **Respondents**

1. This is an appeal under clause 21.02 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, BESCO, Bangalore (herein after referred to as the 2nd

Respondent) vide No CGRF/152/2012/2198-203 dated 27/12/2012 in respect of the Appellant's grievance relating to non-refunding of the excess amount collected by applying wrong tariff schedule and also collection of Electricity Tax under the Karnataka Electricity (Taxation on Consumption) Act, 1959 along with interest. The 2nd Respondent has refused to grant any relief to the Appellant. Aggrieved by the decision of the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant is an Electrical consumer of BESCO under H.T-2(a) tariff schedule. Installation bearing R.R No S-4 HT 150 stands in the name of the Appellant. The Appellant was initially sanctioned 350 KVA power.

3. The Appellant is a software company registered with the Department of Information Technology, Government of Karnataka way back in 2004 and the Company was assigned Registration No. I.T/061/2003-04. The I.T Department issued a Certificate stating that the Appellant is engaged in Software Development and is eligible for availing power under H.T 2 (a) tariff schedule.

4. The subject installation, originally, stood in the name of Shri Ram Rustagi and, thereafter, the installation was transferred in the name of Shri K.Vijayakumar by virtue of letter addressed to the 1st Respondent dated 28.03.2002. Subsequently, the premises came to be leased by Shri K.Vijay Kumar in favour of the Appellant vide lease dated 19.03.2003.

5. The lease transaction was communicated to the 1st Respondent and the 1st Respondent, after verifying the documents and also after conducting inspection, approved the change of tariff from HT 2(b) to H.T 2(a) vide O.M No EEE/ASD/AEE 90)/AE-1/8228-29 dated 09.11.2004. Later, the Appellant applied for additional power which was sanctioned after following the due process.

6. Suddenly, the 1st Respondent, by its letter dated 15th December, 2011, directed the Appellant to produce the IT/BT Certificate. The Appellant, following this

letter, produced the IT/BT certificate on 30.12.2011. When things stood thus, the 1st Respondent issued a demand notice on the Appellant to pay Rs.98,95,358/- towards back billing charges for the period from January, 2005 to January, 2012.

7. The Appellant was billed under H.T 2(a) tariff from the date of service up to 24.12.2011 and, all ratings, meter inspections and meter readings have affirmed the Appellant's eligibility under HT 2 (a) category. Further, the Hon'ble High Court of Karnataka in the case of BESCO Limited Vs TECH MAHINDRA (R&D) Services Limited in W.P No 13813/2010 (G.M-CON) has held that IT/BT certificate can be produced retrospectively i.e after back billing by the Distribution Company. Hence, the Appellant prayed this Authority to set aside the impugned orders and to direct the 1st Respondent to refund the excess amount collected wrongly by applying wrong tariff and also Electricity Tax.

8. The 1st Respondent's comments were called vide letter No OMB/B/G-141/2013/141 dated 03.01.2013. The 1st Respondent filed statement of objections dated 19.01.2013.

9. The 1st Respondent in his statement of objections submitted that the installation bearing R.R No S4HT150 had been serviced on 07.12.2000 with a sanctioned load of 250 KVA under H.T 2(b) tariff in the name of Shri Ram Rustagi. Later, the installation had been transferred in the name of Shri K.C.Vijayakumar and, he, in turn, had leased the premises in favour of the Appellant. Subsequently, based on the Registration Certificate issued by the IT&BT Department and at the request of Shri K.C.Vijayakumar, the tariff had been changed from HT 2(b) to HT-2(a) vide Executive Engineer (EI) letter No EEE/ASD/.

10. The 1st Respondent added that, during the audit of the subject installation in November 2011, the audit staff observed that the concessional tariff had been accorded based on the IT/BT registration certificate. Mere registering the name with the IT/BT Department was not sufficient authorisation to extend the concessional

tariff. Separate orders from IT/BT Department had been required to be produced directing BESCO to accord concessional tariff. Further, the letter dated 15.02.2011 had been addressed to Shri K.C.Vijaya Kumar to produce the IT/BT Certificate specially issued for avaiement of H.T (a) tariff within 15 days, failing which the installation would be billed under H.T 2(b) with effect from 01.02.2004 till the date of production of such certificate. The Appellant produced the IT/BT certificate on 24.12.2011 issued in the name of M/s Tavant Technologies private Limited. Subsequently, a short claim Notice dated 03.02.2012(for the period from January 2005 to January 2012) had been issued to the Appellant to pay Rs.98,95,358/- within 30 days. In response to this, the Appellant filed objections on 01.03.2012 and the 1st Respondent, after considering the objections, passed final orders on 30.03.2012 directing the consumer to make the payment of Rs.98,95,358/-.

11. As per IT/BT Department Circular dated 10.01.2002, ***"The IT and Biotech companies are treated as Industrial Consumer for the purpose of levying electricity tariff as envisaged in the respective policies. The company seeking such concession shall make an application to KBITS. After due verification of actual requirements of the power for IT/BT activities, the Director IT/BT Technology will issue a certificate to the company based on which the KPTCL Authorities shall levy the Industrial Tariff"***. The Certificate dated 03.08.2004 issued by the IT/BT Department produced by the Appellant in the year 2004 did not contain any specific clause in connection with power tariff. The Appellant, however had produced a certificate dated 24.12.2011 issued by the IT/BT Department which entitled concessional power under HT 2 (a). Hence, the 1st Respondent prayed this Authority to confirm the order passed by the 2nd Respondent and to dismiss the appeal.

12. The matter was taken up for hearing on 11.01.2013. On behalf of the Appellant, Advocate Shri Sridhara Prabhu appeared and put forth his arguments and, on behalf of the 1st Respondent, Shri Vinayak, Law Officer BESCO appeared and

submitted his arguments. Arguments from both sides came to be concluded on 18.06.2013.

13. The Advocate for the Appellant argued that the IT/BT Department had issued IT registration certificate on 03.08.2004 and, based on this certificate, the 1st Respondent extended HT 2(a) tariff to the Appellant. This was clear from para 2 of the statement of objection filed by the 1st Respondent which stated that the Appellant had produced I.T Registration Certificate in 2004 and, based on this certificate, the Appellant had been categorised as HT 2(a) consumer. In spite of this, the 1st Respondent had billed for Rs.98.00 lakhs without any basis.

14. The Advocate for the Appellant further submitted that in the case of M/s Talisma Corporation Private Limited, the 1st Respondent had accepted the Registration Certificate issued by the IT&BT Department and back billing charges had been withdrawn. Hence, the Respondents could not discriminate the Appellant according to their whims and fancies and the Appellant is entitled to be treated on par with M/s Talisma Corporation Private Limited and, hence, prayed this Authority to set aside the impugned order and to issue directions to the 1st Respondent to refund Rs.98.00 lakhs to the Appellant.

15. Both parties were informed vide letter No.OMB/B/G-141/2013/189 dated 26.04.2013 regarding availability of Sub-Regulation 1 of Regulation 20 of KERC (Consumer Grievance Redressal Forum and & Ombudsman) Regulations, 2004 which provides for settlement by agreement through conciliation and mediation. However, both parties have not availed this opportunity. Hence, I am proceeding to pass an order in this matter.

16.. Having regard to the contending position of the parties, the issue that emerges for our consideration is:

a) Whether the Government of Karnataka circular vide No ITD06 PRM, 2001 dated 10th January,2002 allows for supply of power under industrial

tariff based only on production of Registration Certificate issued by the IT/BT Department or required a separate Certificate by the Department extending industrial tariff after verification of actual requirement?

17. It is the case of the Appellant that based only on production of IT Registration Certificate issued by the IT/BT Department that he is entitled to get power supply under HT 2(a) tariff schedule and, further, the Distribution Company has rightly sanctioned power under HT 2(a) initially based on the I.T.Registration Certificate. Subsequent back billing for Rs.98,95,358/- based on audit observation that the Registration Certificate did not entitle the Appellant to get power supply under industrial tariff and separate order from the IT&BT Department was required directing BESCO to accord concessional tariff is incorrect and, hence, he deserves refund of the excess amount collected.

18. In order to find out the correctness or otherwise of the arguments of the Appellant, we will have to refer to the Government Circular dated 10.01.2002. Para 1 of the Circular says that industries engaged in IT/BT need to register their unit with the Director IT/BT and he shall issue a Certificate in the prescribed format in Annexure –III. Further, Para 5 of the Government circular under the caption `Power Tariff' says that ***"The IT & Biotech companies are treated as "industrial consumers"*** and not ***"commercial consumers"*** for the purposes of levying electricity tariff as envisaged in the respective policies. The company seeking such concessions shall make an application to KBITS. After due verification of actual requirements of the power for IT/BT/Biotech activities, the Director, IT/Biotechnology, will issue a Certificate to the Company based on which the KPTCL authorities shall levy the Industrial Tariff.

19. Government Circular dated 10.01.2002 lays down detailed procedure for supply of power to industries under HT2 (a) tariff schedule. As per the Circular, the Company seeking such concession should have to first register with the Director, IT/BT Department, Government of Karnataka and this is a prerequisite for seeking

concession and mere registering with the IT&BT Department does not confer any right on the company to claim industrial tariff. After registering the unit with the Director IT/BT, ***"the company seeking concession shall make an application to KBITS"*** and afterwards, after verifying the actual requirement of power for IT/BT activities, the Director, IT/BT will issue a certificate to the Company. Based on this certificate, KPTCL authorities have to levy industrial tariff.

20. In the present case, such a procedure seems to have not been followed by the parties. The 1st Respondent, based only on the Registration Certificate issued by the IT/BT Department appears to have extended industrial tariff from 01.12.2004 to 24.12.2011. Subsequently, during the Audit of HT installation in November 2011, it was observed that the industrial tariff had been applied to the Appellant Company based only on Registration Certificate issued by the IT/BT Department without insisting on a separate Certificate issued by the IT/BT Department after due verification of actual requirements of power of the IT Company. Based on this Audit observation, the 1st Respondent is found to have raised a short claim for Rs Rs.98,95,358/0. The Audit observation conforms to Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Hence, the short claims made by the 1st Respondent cannot be held illegal.

21. The Advocate for the Appellant has vehemently argued that any Government policy or any circular issued by a Distribution Company should be subservient to the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which has come into effect from 17.08.2006. Both the Distribution Company and the Consumer have to strictly follow the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. In the present case, the Appellant has adhered to the procedure laid down under Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and the Distribution Company has assigned HT-2(a) tariff to the Appellant after satisfying that the Appellant had followed the required procedure. In case BESCO wanted to follow the Government Circular, then it should have included the Government Circular in the Conditions of

Supply of Electricity of Distribution Licensees in the State of Karnataka. Since this is not included in the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, BESCO cannot make any short claim against the Appellant. This argument of the Appellant was rebutted by the Advocate for the 1st Respondent. He argued that the Government and other Public Authorities can issue Policies and Circulars for proper implementation of the Act and Rules and, only when such circulars are found to be not in accordance with the Act and Rules, then they are liable to be set aside. In the present case, the 2002 Government Circular is not opposed to the Electricity Act or Rules and even the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and, hence, such Policies and Circular cannot be held illegal. There is a substance in the arguments made by the Advocate for the 1st Respondent in the sense that Government and other Public Authorities have powers to make policy and issue Circulars for implementation of the Act and Rules and they can be held illegal only when they violate the Act and Rules. In the present case, 2002 Government Circular apparently seems to have not violated any Act or Rules and not even the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. As for as avilment of industrial tariff is concerned, Government has laid down certain procedure and this procedure requires production of a separate certificate issued by the Director, IT&BT after assessing the actual power requirement of an IT&BT Industry. This procedure is found to have not been followed by the 1st respondent when power was sanctioned in 2004. Subsequently, the audit wing seems to have pointed out this lapse of procedure. Based on the audit observations, BESCO has made a short claim which is perfectly in order and, hence, this Authority does not see any merits in the arguments of the Advocate for the Appellant.

22. The Advocate for the Appellant has argued that the 1st Respondent in the case of M/S Talisma Corporation though serviced in 2001, accepted the Certificate issued by the Commerce & Industries Department on 28.11.2011 and, based on the Certificate, back billing has been withdrawn. On the same lines, though the

Appellant has produced the certificate issued by the IT&BT Department on 24.12.2001, the 1st Respondent has back billed which amounts to discrimination. There appears to be some truth in the arguments made by the Advocate for the Appellant. The 1st Respondent is found to have extended such benefits to M/s Talisma Corporation. The Commerce and Industries Department Certificate on which the 1st Respondent relied for grant of HT2(a) tariff benefits to M/s Talisma Corporation is found to have been addressed to the Commercial Taxes Department for grant of exemption of entry tax and purchase tax and there is no mention regarding supply of power to M/s Talisma Corporation under HT2(a) . The 1st Respondent should not have acted on such certificate and withdrawn the back billing as this has given handle to other industries to complain and attribute motives. Hence, the 1st respondent is hereby directed to verify once again and take action to withdraw the benefit extended to M/s Talisma Corporation and send compliance to this authority. Hence, the following orders:

ORDER

- 1) For the foregoing reasons, **the appeal is dismissed.**
- 2) BESCO is directed to investigate issue regarding purported illegal extension of HT2 (a) tariff to M/s Talisma Corporation and to withdraw benefits within 3 weeks if what has been alleged is true. BESCO to send compliance within 4 weeks to the Electricity Ombudsman.



(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. M/s. Tavanth Technologies Pvt.Ltd., Guava Garden, CSRI-II, 5th Block, Koramangala, Bangalore-560095 (represented by its Legal Counsel, Sri Shridhar Prabhu, Advocate, Bangalore).

2. Consumer Grievance Redressal Forum, BESCO Corporate Office, K.R.Circle,

Bangalore.

3. The Asst.Executive Engineer (Ele), S-4 Sub Division, BESCO, Koramangala, Bangalore – 560048).

4. Managing Directors of ESCOMs.

5. The Law Officer, BESCO Corporate Office, K.R. Circle, Bangalore

6. PS to Hon. Chairman, KERC

7. PS to Hon.Member (H), KERC

8. PS to Hon.Member (S), KERC

9. PS to Secretary, KERC